JUSTICE

Ralph F. Boyd, Jr., Assistant Attorney General for Civil Rights.

Deborah J. Daniels, Assistant Attorney General for the Office of Justice.

Thomas L. Sansonetti, Assistant Attorney General for Environment & Natural Resources.

Robert D. McCallum, Jr., Assistant Attorney General for the Civil Division.

Eileen J. O'Connor, Assistant Attorney General for Tax Division.

Sarah V. Hart, Director, National Institute of Justice.

Richard R. Nedelkoff, Director of the Bureau of Justice Assistance.

J. Robert Flores, Administrator, Office of Juvenile Justice and Delinquency Prevention.

James W. Ziglar, Commissioner, Immigration and Naturalization Service.

John W. Gillis, Director, Office for Victims of Crime.

Asa Hutchinson, Administrator, Drug Enforcement Agency.

Sharee M. Freeman, Director, Community Relations Service.

Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission.

LABOR

Eugene Scalia, Solicitor of Labor.

John Lester Henshaw, Assistant Secretary, Occupational Safety and Health.

Emily Stover DeRocco, Assistant Secretary for Employment Training Administration.

STATE

John D. Negroponte, Representative to the United Nations.

Otto J. Reich, Assistant Secretary for Western Hemisphere Affairs.

Charlotte L. Beers, Undersecretary for Public Diplomacy.

Clark Kevin Ervin, Inspector General.

Dennis L. Schornack, Commissioner, International Joint Commission.

William A. Eaton, Assistant Secretary for Administration.

TRANSPORTATION

Allan Rutter, Administrator, Federal Railroad Administration.

Kirk Van Tine, General Counsel.

Ellen G. Engleman, Administrator, Research and Special Programs.

Jeffrey William Runge, Administrator, National Highway Traffic Safety Administration.

TREASURY

Michele Davis, Assistant Secretary for Public Affairs.

Kenneth Dam, Deputy Secretary of the Treasury.

Peter R. Fisher, Undersecretary for Domestic Finance.

Jimmy Gurule, Undersecretary for Enforcement.

Rosario Marin, Treasurer of the United States.

Brian Carlton Roseboro, Assistant for Financial Markets.

Henrietta Holsman Fore, Director, U.S. Mint.

Robert C. Bonner, Commissioner of Customs.

Sheila C. Bair, Assistant Secretary for Financial Institutions.

VETERANS AFFAIRS

Gordon H. Mansfield, Assistant Secretary for Congressional Affairs.

Claude Kicklighter, Assistant Secretary for Policy and Planning.

EXECUTIVE BRANCH

John D. Graham, Administrator of the Office of Information and Regulatory Affairs.

Jon M. Huntsman, Deputy USTR.

Mark B. McClellan, Member, Council of Economic Advisors.

Allen Frederick Johnson, Chief Agricultural Negotiator, USTR.

John Walters, Director, Office of Drug Control Policy.

AGENCIES

Robert E. Fabricant, General Counsel, EPA.

Hector Baretto, Administrator, Small Business Administration.

Roger Walton Ferguson, Governor, Federal Reserve System.

Jeffrey R. Holmstead, Assistant Administrator for Air and Radiation, EPA.

George Tracey Megan, III, Assistant Administrator for Water, EPA.

Eduardo Aguirre, Jr., First Vice President & Vice Chair, Export-Import Administration.

Cari Dominguez, Chairwoman, Equal Employment Opportunity Commission.

Harvey L. Pitt, Chairman, Securities and Exchange Commission.

Ross J. Connelly, Executive Vice President, OPIC.

Carole L. Brookins, US Executive Director of the International Bank for Reconstruction.

Judith Elizabeth Ayres, Assistant Administrator for International Activities.

Daniel R. Levinson, Inspector General, GSA.

Marion Blakey, Chairman, National Transportation Safety Board.

John Arthur Hammerschmidt, Member, National Transportation Safety Board.

Donald Schregardus, Assistant Administrator for Enforcement.

JUDICIARY

John G. Roberts, Jr., U.S. Circuit Court, District of Columbia.

Miguel A. Estrada, U.S. Circuit Court, District of Columbia.

Edith Brown Clement, U.S. Circuit Court, Fifth Circuit.

Priscilla Richman Owen, U.S. Circuit Court, Fifth Circuit.

Dennis W. Shedd, U.S. Circuit Court, Fourth Circuit.

Roger L. Gregory, U.S. Circuit Court, Fourth Circuit.

Terrence W. Boyle, U.S. Circuit Court, Fourth Circuit.

Barrington D. Parker, U.S. Circuit Court, Second Circuit.

Deborah L. Cook, U.S. Circuit Court, Sixth Circuit.

Jeffrey S. Sutton, U.S. Circuit Court, Sixth Circuit.

Michael E. McConnell, U.S. Circuit Court, Tenth Circuit.

Sharon Prost, U.S. Circuit Court, Federal Circuit.

Lavenski R. Smith, U.S. Circuit Court, Eighth Circuit.

William J. Riley, U.S. Circuit Court, Eighth Circuit.

Charles W. Pickering, Sr., U.S. Circuit Court, Fifth Circuit.

Timothy M. Tymkovich, U.S. Circuit Court, Tenth Circuit.

Harris L. Hartz, U.S. Circuit Court, Tenth Circuit.

Carolyn B. Kuhl, U.S. Circuit Court, Ninth Circuit.

Richard R. Clifton, U.S. Circuit Court, Ninth Circuit.

Michael J. Melloy, U.S. Circuit Court, Eighth Circuit.

Richard F. Cebull, U.S. District Court, District of Montana.

Sam E. Haddon, U.S. District Court, District of Montana.

Terry L. Wooten, U.S. District Court, District of South Carolina.

Laurie Smith Camp, U.S. District Court, District of Nebraska.

Paul G. Cassell, U.S. District Court, District of Utah.

John D. Bates, U.S. District Court, District of the District of Columbia.

Reggie B. Walton, U.S. District Court, District of the District of Columbia.

Michael P. Mills, U.S. District Court, Northern District of Mississippi.

James E. Gritzner, U.S. District Court, Southern District of Iowa.

Mr. KYL. Mr. President, I will continue to work with the majority and minority leaders to ensure that we can consider these nominees.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Thank you, Mr. President.

## REGULATION OF ENERGY MARKETS

Ms. CANTWELL. Mr. President, I rise today to address an issue of extraordinary importance to the State of Washington, the Pacific Northwest, and the entire west coast. That is the role of the Federal Energy Regulatory Commission in regulating our Nation's energy markets and righting the wrongs that have been visited upon ratepayers in the West by runaway energy prices over the last year.

We are now 22 days into an expedited review process by the Federal Energy Regulatory Commission, designed to determine refunds for the unjust and unreasonable rates paid by Western consumers.

At the urging of my colleagues from the Northwest, Senators MURRAY, WYDEN, SMITH, and myself, FERC finally recognized the realities of the energy markets in the West when they allowed Pacific Northwest utilities to participate in these proceedings and the expedited review process. But my main concern is that in the haste of putting the California debacle behind it, FERC will again overlook the Northwest and consumers who have been impacted by as much as 50-percent rate increases.

I am afraid my suspicions were borne out last week when the administrative law judge charged with overseeing this refund matter issued his recommendations to FERC, again paying little attention to the Northwest problem. It is now up to FERC to determine what to do with the judge's recommendation.

I believe the Commission should not—and cannot—in the interest of fairness ignore the Northwest in its refund calculation. While many of my colleagues are well aware of the toll this crisis has taken on California, we—and FERC—cannot disregard the impact that it has had on Northwest citizens, businesses, and communities of Washington State.

Equitable treatment in this refund proceeding requires that the Commission recognize a certain fundamental truth: That Northwest consumers have been harmed, and they have been harmed by unjust and unreasonable prices that have prevailed in all energy markets throughout the West—inside and outside California, and in spot, forward, and long-term power markets.

There are differences between how California and Northwest utilities manage their obligations to serve consumers. Thus, FERC should not come up with a one-size-fits-all solution for a refund methodology. The basic litmus test should be this: Did power rates meet the commonsense test of reasonableness? If the answer is no, then the Commission must order refunds. This determination should not depend on whether the utilities bought energy on the spot market or made their purchases under long-term contracts.

The Northwest has been hurt by California's dysfunctional marketplace, and yet we now also risk being hurt because we in the Pacific Northwest do not operate the same way as the California ISO, when it comes to the issue of refunds. We run the risk of being penalized twice.

Western consumers have been impacted by the havoc unleashed by California's unstable energy markets and the apparent gamesmanship of a few who have taken advantage of this broken power market.

This topic is of particular concern to the Northwest because, as the crisis has evolved, FERC has been slow to respond to the situation in California, and slower to respond in the Northwest. In the refund proceeding, focusing solely on California's spot markets would significantly harm the utilities of my State and ignore the residual damage that California has caused in all of the energy markets throughout the West.

What are some of those impacts? Make no mistake. The pain inflicted by this crisis has been real on the people of Washington State. Over the last year skyrocketing energy prices have caused retail electricity rates to rise in all corners of my State: 20 percent in Clark County, 30 percent in Cowlitz, Skamania, and Okanogan counties, 35 percent in Snohomish County, and 50 percent in the cities of Tacoma and Seattle. Even as these utilities have passed on rate increases to consumers, some have been forced to issue hundreds of millions of dollars' worth of bonds to cover the cost. Seattle, for example, normally spends $100 million per year on purchasing power. This year the city spent over $450 million to keep the lights on—and that is just in the first 6 months of the year.

While the utility in its first 98 years of history issued a total of only about $1 billion in bonds, it is having to issue $700 million in debt this year alone to pay for its purchased power bills. A number of Northwest utilities have even had their bond ratings downgraded as a result of this crisis.

Indeed, the economic impacts on Washington have already begun to take root. Energy-intensive industries such as aluminum smelting and pulp and paper industries have been driven to the brink of collapse, and layoffs already number in the tens of thousands. There are innumerable other businesses that are on the brink as well.

For example, Georgia-Pacific has shut down its pulp and paper mill in Bellingham, WA, laying off 420 workers. Another pulp and paper mill in Steilacom, WA, has had to idle its workforce due to escalating power prices.

Washington's aluminum industry, which provides my State with between 7,000 to 8,000 family-wage jobs, has curtailed a large part of its production anywhere from 6 months to 2 years. And it is unclear whether those companies will ever resume production at their current levels given this agreement to shut down.

These companies, which produce a large portion of the Nation's aluminum, have given up more than 75 percent of their power in order to minimize the rate increase for the entire region.

Due to drought conditions and the cost of purchasing power for irrigation, many farmers in the State of Washington have also been hurt. They have chosen to forego the planting this summer.

Because agriculture is already one of the most stressed industries in Washington, the impacts of the current energy situation are particularly devastating. Many of our irrigators have been paid not to farm based on energy savings compared to the their previous year's usage. When irrigators can't farm, that has ramifications for entire communities and related businesses such as cold storage, food processing, and transportation. So the agricultural impact is being felt broadly in our State.

The effect on small businesses have been equally harrowing. At a Small Business Committee field hearing that was held in Seattle by the chairman, Senator KERRY, I heard from the president of a steel foundry based in Tacoma, which has been in operation since 1899—a company that employs over 350 people. In the face of this crisis, this plant, with a very aggressive approach, reduced its power consumption by over 20 percent. At the same time, the foundry has increased its efficiency and will actually produce more steel this year. But despite this extraordinary effort to reducing energy consumption, the company's power bills are 60 percent over what it was the year before, virtually eliminating any profits and already forcing a handful of layoffs. In the words of the company's president, any further rate increase will mean that the foundry will have to close its doors.

This crisis has a very human face. The LIHEAP caseload in the State of Washington is expected to grow 50 percent this year. I have heard from many senior citizens who can't afford to light their homes at night and will be making hard choices later this fall and winter about heating their homes and buying food. I have visited children who are worried that their parents, in some of those industries I mentioned, will lose their jobs. And those children are concerned they will then lose their homes when their mothers and fathers do not have the work to pay their bills.

Our schools have also had to cut corners. The Central Valley School District near Spokane, for example, has had to divert over $200,000, that would otherwise be used to purchase textbooks, to pay its energy bills.

What is more startling is the gravity of these impacts, and the number of Washington residents suffering from this crisis, is going to continue to grow. I say that because the Bonneville Power Administration, which provides Washington with 70 percent of its power, will be forced to raise its rates another 46 percent this October.

It is clear that FERC has an obligation to help these people I have just mentioned, and to help the State of Washington overcome the economic impacts caused by the California market and by a serious drought. FERC must not only stabilize our market and ensure fair rates in the future, but must also address past wrongs and the harm that has impacted consumers.

FERC took its first serious step in its June 19 price mitigation order. Given the economic casualties in my State, I believe this action was long overdue. But it was a positive first step.

The effectiveness of FERC's price mitigation plan will remain of vital concern to all of us from the West. We need to remain mindful of what the effects of this California-focused mechanism on supply in the Northwest, as our region's peak winter heating season approaches.

But let me address specifically the issue of refunds and where we are today in the process. Of particular concern to me is the fact that, as part of the June 19 order, FERC established a 15-day settlement conference for participants in California energy markets, and others in the West, to reach agreement on potential refunds for overcharges and settlement of California's unpaid accounts.

As has been the case throughout this crisis, the order was initially silent on the issue of relief for the Pacific Northwest. It was only after the intervention of a bipartisan group of Northwest Senators that FERC amended its order clarifying that Northwest parties would also participate in those discussions.

But the 15-day settlement window has now closed and no agreement has been reached—for consumers in either Washington State or California. As I have mentioned, the administrative law judge made his recommendation last week on how to proceed. He was mostly silent on the issue of relief for the Pacific Northwest. It should also be noted that, to the extent the recommendations did comment on our concerns, it was not factually correct.

While the recommendations said Pacific Northwest parties "did not have data on what they were owed, nor an amount of refunds due them,'' it is a matter of public record that a group of Northwest utilities—net purchasers in the West's dysfunctional power markets—submitted a claim for $680 million, as well as documentation and a proposed methodology for calculating those refunds.

That notwithstanding, this is a silence the Commission itself cannot, in the interest of fairness, sustain. FERC must seek an equitable solution for the Northwest. In order to do that I believe it is critical that FERC recognize some fundamental differences between the Northwest and California energy markets—and that fundamental fairness requires that refunds go to customers in California and the Northwest.

First, FERC needs to recognize that most Northwest participants in the California markets are load-serving utilities. These load-serving utilities are responsible for a very small percentage of the power sold into the California market—certainly no more than 4 percent—and they are clearly not the parties that broke the market. Further, many in the Northwest, especially the Bonneville Power Administration, have been partners in helping solve the California problem by keeping the lights on during emergencies, at costs to the Northwest that cannot necessarily easily be quantified—particularly when one takes into account the Northwest's endangered species and salmon issues, and the delicate balance we work hard to achieve. Every time we generate power, it is quite a delicate balance.

Unlike power marketers or merchant generators, Northwest utilities operate under a statutory obligation to meet all their customers' electricity needs. Further, our region's power supply is essentially based on hydropower. A full 78 percent of Washington state's generation comes from hydropower. As has been made painfully clear by this year's drought—which has amounted to the second worst year of drought on record in the history of our State—the vagaries of hydroelectric production require that our utilities make other wholesale power purchases to meed load. In keeping with reasonable utility planning practices, these companies buy a portfolio of products of varying duration.

This points to a second, fundamental difference between the Northwest and California markets: Whereas California utilities were forced, under the State's restructuring law, to make all of their purchases in a centralized hour-ahead or day-ahead market, we have no such centralized market in the Northwest. While we do have very short-term bilateral markets, our utilities have traditionally only used these to balance the difference between forecasted and actual loads, streamflows, weather conditions, and other similar factors.

Unlike the California ISO market, the Northwest utilities rely heavily on ''forward'' or long-term contracts that last for periods varying from a month ahead to a quarter or two or even longer.

But these contracts have been closely affected by the skyrocketing spot market prices in California. It is thus absolutely crucial, for the purposes of its refund proceeding, that the FERC recognize that power prices throughout the West—and not just in spot markets, but in these forward contracts as well—are unjust and unreasonable. Washington State's prices have moved in lockstep with the spot market prices.

In its June 19 order, the Commission itself commented on this, stating that there is a ''critical interdependence among prices in the ISO's organized spot markets, the prices in the bilateral spot markets in California and the rest of the West, and the prices in forward markets.''

So the Commission itself has recognized the relationship between these prices. Indeed, when one compares forward contract prices in the Northwest with spot market rates both within the region and in California over the last year, they show a correlation of more than 80 percent on a monthly average basis; that is, forward prices in the Northwest have moved in tandem with California's prices, which the Commission has deemed unjust and unreasonable. It is these forward prices that have largely driven the rate increases in the Northwest.

It is clear, then, that any FERC refund order that seeks to treat all Western participants fairly, as the Power Act says it must, must recognize the relationship between spot markets and forward markets.

Simply put, any refund policy must not disadvantage the utilities in the Northwest because of the contractual mechanism they have used to acquire power.

Let me just touch on the case of BPA because I mentioned it earlier. Throughout this crisis, BPA has responded to the California ISO's urgent calls for power supply when the State was teetering on the edge of rolling blackouts. In fact, on three separate occasions, the Department of Energy issued emergency orders directing Bonneville to sell power into the State of California. It should also be noted, however, that California entities have yet to repay BPA for about $100 million of these transactions.

As one of these entities has entered into bankruptcy, it remains questionable how the Northwest will ever receive this $100 million repayment. Meanwhile, BPA has at times drawn down its reservoirs, arguably compromising the reliability of Northwest power system to aid California. So while BPA has sold into the California spot market, it has actually been a net purchaser during the crisis, when one takes into account its forward contracts. And when faced with the volatile energy prices throughout the West, Bonneville earlier this year made the difficult decision to pay consumers to curtail their loads rather than to venture into the market.

I mentioned various of those efforts earlier in my remarks about the aluminum industry. Bonneville and the Northwest customers it serves have been victims of the power crisis touched off by this experimentation in partial deregulation, which has created this dysfunctional market.

In conclusion, it is important that the Commission act fairly and that my State's utilities not be penalized for sales into California when they have been forced to purchase power at a similar unjust and unreasonable rate.

It is very important that the Commission work toward a solution that gives the Northwest refunds, just as it is promising to do in California. FERC must work towards a comprehensive settlement that addresses the claims of both California and the Northwest. In order to reach an equitable solution, it must acknowledge the fundamental differences in the two markets. I believe a fair outcome requires FERC to take a few simple steps.

First, FERC must recognize an inescapable commonsense conclusion: that all Western power markets have been dysfunctional for quite some time. The Commission's duty under the Federal Power Act is to ensure just and reasonable rates in all markets at all times. I urge the Commission to act in accordance with section 309 of the Power Act in doing this.

Second, power prices have been unjust regardless of the type of market which the Northwest operates in. The fact is, we in the Northwest have a different market than California, and FERC simply cannot use the same formula when calculating refunds for our consumers. It must take into account both forward and long-term contracts. Those utilities that can, using this methodology, demonstrate a legitimate complaint should receive refunds.

Third, FERC must not leave the Northwest behind. Northwest utilities must be allowed to plead their case during the upcoming evidentiary hearing.

Finally, repayments of amounts due to the Northwest for sales into California must be an integral part of any refund calculation.

I call on the FERC Commissioners to incorporate these principles into a refund policy for the Northwest. It is indisputable that the Northwest has been harmed. Now it is up to FERC to take the action to mitigate those damages and to repay the consumers in Washington State.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

## THE GREAT COMPROMISE

Mr. BYRD. Mr. President, 214 years ago today, on July 16, 1787, the members of the Constitutional Convention agreed to what is known as the Great Compromise. Edmund Randolph, on May 29, 1787, had introduced the ''Virginia Plan'', drafted by James Madison,